STATE OF MICHIGAN

COURT OF APPEALS

THOMAS C. DEWARD, Petitioner-Appellant, v MICHIGAN PUBLIC SERVICE COMMISSION, Appellee, and LDMI TELECOMMUNICATIONS, INC., Respondent-Appellee.	UNPUBLISHED October 6, 2009 No. 283927 MPSC LC No. 00-015305

Before: Cavanagh, P.J., and Markey and Davis, JJ.

PER CURIAM.

Petitioner Thomas C. DeWard, acting *in propria persona*, claims an appeal from an order entered on December 4, 2007, by appellee Michigan Public Service Commission (PSC) adjudicating his complaint against respondent LDMI Telecommunications, Inc. We affirm.

I. Underlying Facts and Proceedings

Petitioner had three telephone lines from LDMI: a local service line, a line providing interstate and intrastate long distance service but no local service, and an 800 line. On May 9, 2007, petitioner filed a complaint alleging that LDMI violated the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, with respect to his local and long distance telephone services.[1]

[1] Petitioner withdrew his allegations regarding the 800 line. Those allegations are not at issue in this appeal.

First, petitioner claimed he was billed for optional services that he never ordered, in violation of § 507 of the MTA, MCL 484.2507. Specifically, petitioner contended he was improperly billed, on both lines, for a "network compensation charge" at $5.95 per month, and a "regulatory compliance charge" at $2.18 per month, for a total of $153.47 in invalid charges. In addition, petitioner alleged that the imposition of late fees violated § 507.

Second, petitioner claimed he was billed for service provided after he cancelled the service, in violation of § 502(1)(c) of the MTA, MCL 484.2502(1)(c). Specifically, petitioner contended he cancelled his intrastate and interstate long distance line on February 2, 2007, but that a credit for service prepaid to February 16, 2007, did not appear on his subsequent bills.

Third, petitioner claimed that LDMI employees made several false, misleading, or deceptive statements during the cancellation and refund process, in violation of § 502(1)(a) of the MTA, MCL 484.2502(1)(a). Specifically, petitioner asserted that when he cancelled his intrastate and interstate long distance line (for which local service was provided by AT&T), he was told by an LDMI employee that he must contact AT&T to affect cancellation. Petitioner maintained that this assertion was false and that it resulted in the charge of a cancellation fee by AT&T. In addition, petitioner asserted that LDMI employees falsely represented that late charges would be removed from his bill, and that a refund for prepaid long distance service would be credited to his account.

Petitioner sought $600 as compensation for the time he spent attempting to resolve his differences with LDMI. In addition, petitioner sought imposition of substantial fines and penalties against LDMI pursuant to MCL 484.2506 and MCL 484.2601.

On December 4, 2007, the PSC issued an order finding that petitioner had established only one of his three claims. The PSC found that the imposition of the "network compensation charge" and the "regulatory compliance charge" did not violate MCL 484.2507 for the reason that the charges were "components of LDMI's tariffed long distance service and are not optional, but rather are charged to all customers who choose to take long distance service from LDMI." The PSC also concluded that a late fee did not constitute an optional service, and that the imposition of a late fee did not violate MCL 484.2507.

The PSC found that petitioner was not charged for service after the date the service was cancelled. The record showed that petitioner cancelled his long distance service on February 2, 2007; petitioner did not contend that he received long distance service after that date. The record also showed that petitioner's request for a refund was not submitted internally by LDMI until July 14, 2007, and that petitioner did not receive the refund until September 19, 2007. The PSC concluded that because petitioner agreed that he received no long distance service after February 2, 2007, and because petitioner received the refund eventually, no violation of MCL 484.2502(1)(c) occurred.

The PSC found that LDMI made three false statements in violation of MCL 484.2502(1)(a). The record showed that when petitioner complained about the imposition of late fees, he was told that those fees would be removed from his "next" bill; that did not occur. Petitioner was also told that a credit for prepaid service would appear on his "next" bill; that did

not occur. Moreover, petitioner was informed, falsely, that he was required to contact AT&T to cancel his intrastate and interstate long distance service. The PSC concluded that LDMI should pay $500 for each false statement, for a total of $1,500. The PSC found that petitioner should be made whole for the fees and costs incurred as a result of LDMI's violations of MCL 484.2502(1)(a), but determined that petitioner was entitled to compensation for only his successful claims. The PSC reasoned that because petitioner brought three claims and was successful on one claim, he was entitled to one-third of his claimed fees and costs of $5,714.05, or $1,904.68.[2]

II. Standard of Review

The standard of review for PSC orders is narrow and well defined. All rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable. MCL 462.25; *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). An order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966).

A final order of the PSC must be authorized by law and be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney Gen v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

We give due deference to the PSC's administrative expertise, and as a general rule, we will not substitute our judgment for that of the PSC. *Attorney Gen v Public Service Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). We give respectful consideration to the PSC's construction of a statute that the PSC is empowered to execute, and will not overrule that construction absent cogent reasons. If the language of the statute is vague or obscure, the PSC's construction serves as an aid to determining the legislative intent, and will be given weight if it does not conflict with the language of the statute or the purpose of the Legislature. However, the construction given to a statute by the PSC is not binding on us. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103-109; 754 NW2d 259 (2008). Whether the PSC exceeded the scope of its authority is a question of law that we review de novo. *In re Complaint of Pelland Against Ameritech Michigan*, 254 Mich App 675, 682; 658 NW2d 849 (2003).

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[2] The Administrative Law Judge had recommended that petitioner be awarded $2,262.05 as compensation for time and expenses incurred in pursuing his complaint.

III. Analysis

A. Billing for Cancelled Services

On appeal, petitioner argues that the PSC erred by finding that LDMI did not violate MCL 484.2502(1)(c). Petitioner cancelled his intrastate and interstate long distance service on February 2, 2007, but LDMI did not credit his account for the amount he had prepaid for that service. LDMI issued a refund, which petitioner received in September 2007; however, because LDMI did not credit petitioner's account, LDMI effectively billed him for service after that service was cancelled. We disagree.

MCL 484.2502 reads in pertinent part:

> (1) A provider of a telecommunication service shall not do any of the following:
>
> * * *
>
> (c) If an end-user has canceled a service, charge the end-user for service provided after the effective date the service was canceled.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Verizon North, Inc v Public Service Comm*, 260 Mich App 432, 437-438; 677 NW2d 918 (2004).

Essentially, petitioner contends that the process LDMI followed to provide him with a refund violated MCL 484.2502(1)(c). This argument is without merit. We cannot, as petitioner seems to suggest, ignore the word "provided" when interpreting MCL 484.2502(1)(c). We must assume that every word in the statute has some meaning. *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). The fair and natural import of the terms employed in a statute, in view of the subject matter, governs the interpretation of the statute. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007).[3] The PSC rejected petitioner's argument on the ground that LDMI did not provide petitioner with long distance service after February 2, 2007, meaning that LDMI did not enable petitioner (the "end-user") to utilize its long distance service after that date. No further charge for the service appeared on petitioner's bill. The language of MCL 484.2502(1)(c) is plain and unambiguous, and the PSC's interpretation and application of that language is consistent with applicable rules of statutory construction. No cogent reason exists for this Court to overrule that construction. *In re Complaint of Rovas*, *supra* at 108.

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[3] The MTA does not give a specific definition to the term "provided."

Petitioner received a refund for the service for which he had paid but did not use, albeit after a lengthy delay. Petitioner has not shown by clear and convincing evidence that the PSC's decision that LDMI did not violate MCL 484.2502(1)(c) is unlawful or unreasonable.

B. Late Fees

Next, petitioner argues that the PSC erred when it concluded that LDMI's addition of late fees to his account did not violate MCL 484.2507(1). Petitioner asserts that the intent of the Legislature in passing MCL 484.2507(1) was to prevent telecommunication providers from adding services to a customer's service package without the customer's permission, a practice commonly known as "cramming." LDMI added three late payment charges to petitioner's bill without petitioner's permission. No rule prohibits a telecommunication provider from adding inappropriate charges to a customer's account; therefore, MCL 484.2507(1) must be interpreted to protect customers from this practice. We disagree.

MCL 484.2507(1) provides:

> (1) A telecommunications provider shall not include or add optional services in an end-user's telecommunications service package without the express oral or written authorization of the end-user.

The MTA defines "telecommunication services" or "services" as "regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage. A telecommunication service is not a public utility service." MCL 484.2102(gg).

Petitioner notes that MCL 484.2507(1) refers not only to optional services, but also contains the phrase "shall not include or add," and argues that that language supports his contention that LDMI was prohibited from adding late fees to his bill without his permission. This argument is without merit. A provision in a statute must be read in the context of the entire statute so as to produce a harmonious whole. *Ferguson v Pioneer State Mut Ins Co*, 273 Mich App 47, 52; 731 NW2d 94 (2006). The phrase "shall not include or add," when read in the context of the entire statute, refers specifically to "optional services." A late fee simply is not a service offered to customers "for the transmission of 2-way interactive communication and associated usage." No cogent reason exists for this Court to overrule the PSC's interpretation of MCL 484.2507(1). *In re Rovas Complaint*, *supra* at 108.

C. Allowable Recovery

Next, petitioner argues that the PSC erred by holding that petitioner was entitled to recover fees and costs only for the claims on which he was successful. Furthermore, petitioner asserts that even if the PSC's holding that he is entitled to recover costs and fees for successful claims only is correct, the PSC's calculation of the compensation due him was inaccurate and not supported by the record. The PSC found that because petitioner was successful on only one claim, he was entitled to only one-third of his claimed costs and fees. No language in MCL 484.2601 requires a complainant to track costs and fees by issue. Absent such language, the PSC's decision is meaningless. Moreover, the PSC fined LDMI $500 for each violation of MCL

484.2502(1)(a), but the fines should have been greater to send a message to other companies that the PSC takes seriously violations of the MTA. We disagree.

MCL 484.2601 provides:

> If after notice and hearing the commission finds a person has violated this act, the commission shall order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:
>
> (a) Except as provided in subdivision (b), the person to pay a fine for the first offense of not less than $1,000.00 nor more than $20,000.00 per day that the person is in violation of this act, and for each subsequent offense, a fine of not less than $2,000.00 nor more than $40,000.00 per day.
>
> (b) If the provider has less than 250,000 access lines, the provider to pay a fine for the first offense of not less than $200.00 or more than $500.00 per day that the provider is in violation of this act, and for each subsequent offense a fine of not less than $500.00 or more than $1,000.00 per day.
>
> (c) A refund to the ratepayers of the provider of any collected excessive rates.
>
> (d) If the person is a licensee under this act, that the person's license is revoked.
>
> (e) Cease and desist orders.
>
> (f) Except for an arbitration case under section 252 of part II of title II of the communications act of 1934, chapter 622, 110 Stat. 66, attorney fees and actual costs of a person or a provider of less than 250,000 end-users.

Petitioner sought a total of $5,714.05 in fees and costs, a figure that included $100 per hour for his time, but did not specifically account for the time and money spent pursuing each category of claim stated in his complaint. The PSC held that because petitioner was successful in showing that LDMI made three false statements and thus violated MCL 484.2502(1)(a), but was unsuccessful in demonstrating that LDMI violated MCL 484.2502(1)(c) or MCL 484.2507(1), petitioner was entitled to one-third of the claimed costs and fees, or $1,904.68.

Petitioner challenges the PSC's decision to compensate him only for the costs and fees associated with his successful claim, contending that no language in MCL 484.2601 limits compensation in that manner. This argument is without merit. The PSC has only that authority granted to it by the Legislature. *Attorney Gen v Public Service Comm*, 231 Mich App 76, 78; 585 NW2d 310 (1998). MCL 484.2601 provides that remedies and penalties are payable to make whole a ratepayer or a person who has been harmed by a "violation" of the MTA. The plain language of the statute clearly indicates that a violation of the MTA must be shown before compensation can be awarded. No language in MCL 484.2601 or any other section of the MTA

authorizes the PSC to compensate a person who complains about an action that is not found to constitute a violation of the MTA.

Furthermore, petitioner has not shown that the PSC erred or abused its discretion by awarding compensation in the amount that it did. Petitioner did not specify the costs and fees incurred in pursuing his claim based on MCL 484.2502(1)(c), i.e., the successful claim. The fines the PSC imposed on LDMI for the three violations of MCL 484.2502(1)(c) were within the range established by MCL 484.2601(b).

D. False Testimony

An LDMI witness stated in prefiled testimony dated August 2, 2007, that petitioner was owed a refund of approximately $25.00, and that the refund had been provided to petitioner. In fact, petitioner's refund check was dated September 10, 2007, and was mailed on September 12, 2007. The testimony of LDMI's witness was false. Petitioner argues that the PSC erred by failing to find that the false testimony constituted a violation of MCL 484.2502(1)(a). We disagree.

It is undisputed that as of the date of the hearing, August 2, 2007, petitioner had not yet received the refund. Nevertheless, the PSC found that the witness's statement did not violate MCL 484.2502(1)(a). Apparently, when the witness indicated that the refund had been provided to petitioner, the witness meant that the refund had been approved and was being processed.

MCL 484.2502(1)(a) prohibits a telecommunication provider from making a statement "regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive." The statement by LDMI's witness regarding the status of petitioner's refund was not a statement regarding the terms or conditions of a telecommunication service. The PSC correctly found that the statement did not constitute the type of statement prohibited by MCL 484.2502(1)(a).

E. Contested Case Hearing

Finally, petitioner argues that the PSC should have conducted a contested case hearing to examine LDMI's billing practices, and by failing to do so, the PSC abandoned its responsibility to protect the interests of ratepayers. We disagree.

MCL 484.2507(2) provides:

> (2) Upon the receipt of a complaint filed by a person alleging a violation of this section or upon the commission's own motion, the commission may conduct a contested case as provided under [MCL 484.2203.]

Petitioner's complaint contained a general request for an investigation of LDMI's customer service and billing departments; the request was repeated and expanded somewhat in petitioner's exceptions to the PFD. The PSC held a contested case hearing on petitioner's specific complaints regarding his service with LDMI, but declined to hold a more general contested case hearing. The decision to hold such a hearing or to decline to do so was entirely within the discretion of the PSC. Petitioner has not demonstrated that any basis existed for such

a broad undertaking, and has not established that the PSC abused its discretion by declining to undertake a general examination of LDMI's billing practices.

IV. Conclusion

The PSC did not err in finding that LDMI did not violate MCL 484.2501(1)(c) or MCL 484.2507(1); the PSC did not err in imposing fines in the manner and in the amount that it did; the PSC did not err in finding that LDMI's witness did not provide false testimony; and the PSC did not err or abuse its discretion in declining to hold a contested case hearing to examine LDMI's billing practices. The PSC's decisions are not unlawful or unreasonable, and are supported by the requisite evidence.

We affirm. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Alton T. Davis